IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

CRP.No. 1719 of 1998(F)

TLB.1091/1973 of TALUK LAND BOARD, MANANTHODY
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REVN. PETITIONERS:
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1. PUTHUKKUDIYIL JOSEPH,
TAVINHAL, NORTH WAYNAD TALUK,
WYNAD DISTRICT.

2. MANGALATH JOSE, TAVINHAL, -DO- -DO-

3. M.K.RAMAN, PALAKKANDI, -DO- -DO-

4. THAZHEVEETTIL PANIPURA BHARATHI,
W/O.GOPALAN, TAVINHAL VILLAGE, -DO- ,-DO-

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:
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1. STATE OF KERALA REP. BY MINISTRY OF REVENUE-1,
TRIVANDRUM.

2. THE DISTRICT COLLECTOR, WYNAD.

3. TALUK LAND BOARD,MANANTHAVADY.

4. SAROJINI C., ELAMBOOR HOUSE,
VIMALA NAGAR, MANANTHAVADY.

5. I.C.SARADA, RESIDING AT -DO-

6. I.C.SURESH KUMAR, RESIDING -DO-

7. I.C.JAYASREE, RESIDING -DO-

8. I.C.VINOD, RESIDING -DO-

9. I.C.SREELATHA, RESIDING -DO-

R1 TO R4 BY GOVT. PLADER SRI PUZHAKKARA MUHAMMED
R4 TO R9 BY ADV. SRI.K.I.MAYANKUTTY MATHER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN, J.

C.R.P.No.1719 OF 1998

Dated this the 18th day of October, 2007

O R D E R

This C.R.P. is filed after obtaining leave by persons who were not made parties in the Taluk Land proceedings, which is impugned in this revision.

2. Petitioners claim to be assignees of excess land surrendered pursuant to resumption of such extent of land held by the declarant in TLB 1091/73. Original declarant was one A.Govindan Nambiar. The party respondents herein are his legal representatives. The Taluk Land Board by its order dated 21/8/1976 found that the original declarant held an extent of 3.60 acres of land in excess. The said extent was surrendered by the declarant on 2l76/10/1976 out of the land comprised in R.S. 187/1 and 181/1 of Thavinhal Village. In the proceedings the declarant had contended that the above said extent is liable to be exempted, since the said land was given by way of gift in favour of his daughter on 17/10/1973 as per registered document No.2552/73. However, the Taluk Land Board rejected the said contention, since the transfer was invalid for the purpose of ceiling

proceedings as it stood then. Subsequently, Section 84 of the Kerala Land Reforms Act was amended with effect from 7/7/1979 by Act 27 of 1979. By this amendment Section 84(1A) was inserted and thereby all gifts executed between 1/1/1970 and 5/11/1974 in favour of son or daughter or son or daughter of a pre-deceased son or daughter were validated. By the same amendment Section 85 was also amended by introducing Section 85 (10), (11) and (12) thereby the person who is entitled for restoration of the ownership or possession of the land based on the amended provision Section 84(1A) to apply before the Taluk Land Board as the case may be for such restoration and provided 60 days' period within which such application has to be filed. Original declarant invoking the said provision under Section 85(10) submitted an application in the prescribed form as contained in 85(11). Since the application was not filed within the period of 60 days, he sought to condone the delay by invoking the provision under Section 108 of the Act. Originally the Taluk Land Board dismissed the application on two grounds; namely, (1) that there is no provision to condone the delay and (2) that the assignment has already been effected. The declarant challenged the said order by filing O.P.No.5051/1985 before this Court and by judgment dated 7th day of June, 1989 this Court allowed the original petition for reconsideration of the matter without reference to the second ground stated, namely, that the land had already been assigned. This Court while dealing with the second ground that the

Land had already been assigned, held that the said reasoning is too transparent to stand scrutiny. Subsequently, again the Taluk Land Board considered the matter and found that the delay is not excusable and again dismissed the application, against which the declarant-Govindan Nambiar filed C.R.P.No.2539/92. This Court found that the delay of 13 days in filing the application invoking under Section 85(1A) ought to be condoned and in that view of the matter, the order passed by the Taluk Land Board rejecting the application filed by the declarant was set aside and the Taluk Land Board was directed to re-consider the matter afresh under Section 85(10) of the Act on merits. It was thereafter that the impugned order was passed allowing the application for restoration of an extent of 3 acres of land out of 3.60 acres taken possession in Sy.No. 187/1of Thavinhal Village to the petitioners in C.R.P.No. 2539/92. Incidentally it should be mentioned that by the time the C.R.P.No.2539/92 was filed, the original declarant died and his legal representatives filed this C.R.P. On receipt of the notice from the the District Collector, wherein reference is made to the order of the Taluk Land Board, the petitioners in such circumstances filed the present C.R.P. Admittedly, the petitioners were not made parties in any of the proceedings which culminated in the earlier original petition nor in the C.R.P. referred to above. Thus, according to them, before they are dispossessed and the land is taken from them, necessarily they have got a right to be heard in

the matter and therefore, the present order without hearing them is violative of the principles of natural justice.

3. The learned Counsel, Sri V.V.Asokan, appearing on behalf of the party respondents submits that since this Court has already held that one of the grounds on which earlier application was rejected, namely, assignment was already taken in this case, cannot stand in the way of the application being allowed, that ground has been set aside by this Court in the earlier proceedings and what remains is only the period of limitation which was already allowed by this Court and therefore there may not be any further objection on the part of the petitioners. I am not able to accept this contention. Admittedly when the petitioners were not parties to the earlier proceedings, they have got a right of being heard in the matter. The question as to whether the party respondents are entitled to the benefit of the said section as introduced by the amended Act itself is a mooted question to be decided, after hearing the affected parties. In this connection it has to be noticed that even according to the petitioners, the original assignment after surrendering by the declarant was made by order dated 31/1/1977 of the District Collector, Kannur. An extent of 1 acre was assigned to Thazheveettil Panippura Venu, another 1 acre was assigned to Thazhevettil Panippura Karappan, 0.98 acre was assigned to Thazheveettil Panippura Veeran and 0.62 acre was assigned to Nottammal Panippura Makka. Karappan and Veeran remitted the first instalment of

the purchase price on 14/3/1977 and 23/3/1977; but Venu and Makka did not remit any amount towards the purchase price and the order of assignment in their favour was cancelled and the assignment now claimed by the petitioners is based on the orders subsequently passed by the District Collector on 14/12/1981. According to him, subsequent to the cancellation of the earlier assignment as a result of the default committed by those assignees, who did not remit the lst instalment, re-assignment was made by the District Collector by subsequent orders. Admittedly, four assignments were made prior to the introduction of Section 84(IA) of the Amended Act. So however two of them admittedly paid the lst instalment. As per the proviso to Section 84(1A) the provisions contained in IA will not apply in respect of any land which has been assigned on registry under Section 96, before the commencement of the Kerala Land Reforms (Amendment) Act,1979. There is an explanation therein as per which for the purpose of clause (b), a land shall be deemed to have been assigned on registry if the purchase price payable for the assignment of that land or the first instalment thereof has been deposited as required by the rules made under this Act.

4. Thus, in the case of assignment already effected prior to the introduction of the Act, in respect of which lst instalment has already been paid by the assignees on registry, the benefit of Section 1A will not apply in favour of the person, whose land has been thus taken and assigned.

Going by the admitted facts it could be seen that if they are already paid first instalment, explanation is attracted and by virtue of the provisions it must be deemed to have been assigned on registry under Section 96. Therefore, as per the proviso, the benefit of Sub Section 1A will not apply. What happens subsequently is not quite relevant in deciding the question as to whether the sub section applied or not. If subsequent to the remission of the lst instalment, there is default in payment of the balance amount, possibly the Government could recover the same under the Revenue Recovery Act or could take such steps as they are entitled to under law. But that will not confer the benefit of Sub Section 1A on the declarant. Once it is found that it is already assigned on registry prior to the commencement of the Act, 1979, the declarant will not be entitled to get the benefit of this newly amended provision. Therefore, in those cases the question of restitution of those lands does not arise. However, in respect of the remaining extent, if there was no assignment prior to the Amendment Act, 1979 and even if there was such an assignment but even the lst instalment is not paid, necessarily the declarant will be entitled to the benefit of the provisions contained in Sub Section 1A and the proviso will not come into play in such case. That is a matter for the Taluk Land Board to consider after hearing the affected parties. Since no notice as such is issued to the petitioners herein, the Taluk Land Board may issue notice to the assignees, who hold the land at present and after hearing

them, pass appropriate orders in accordance with law and subject to what is stated above.

5. For the limited purpose to enable the Taluk Land Board to hear and dispose of the matter afresh and an opportunity has been given to the affected parties of being heard in the matter, the order impugned is set aside. Since this is a long pending matter, expedite disposal is necessary. Hence, there will be a direction to the Taluk Land Board, Mananthavady to dispose of the matter as directed above as expeditiously as possible, at any rate within a period of four months from the date of receipt of a copy of this order.

C.R.P. is disposed of as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1719 OF 1998

O R D E R

18th October, 2007